IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRL.A.No. 2013 of 2003()

SC.200/2002 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA

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APPELLANT: ACCUSED:

KUTTAPPAN, AGED 53 YEARS,
S/O. OUSEPH, PERUMPALLIKUNNEL HOUSE,
MUNIYARA KARA, KONNATHADI VILLAGE.

BY ADV. SRI.C.C.THOMAS

RESPONDENT: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
VELLATHOOVAL, IDUKKI DISTRICT, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 7-11-2007 , THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

Crl.M.A.No. 12994/2003 in Crl.A.No. 2013/2003

Dismissed.

7-11-2007

Sd/-K. Thankappan,
Judge.

mn.

K. Thankappan, J.

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Crl. A. No. 2013 of 2003

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Dated this the 7th day of November, 2007

JUDGMENT

Accused in S.C.No.200/2002 on the file of the Court of the Addl. Sessions Judge (Adhoc-I) Thodupuzha is the appellant. He was charge-sheeted for the offence punishable under section 55(a) of the Abkari Act. The prosecution allegation against the appellant is that on 18-7-2000 at at about 6.10 P.M. the appellant was found in unauthorized possession of 23 bottles each containing 375 ml. Aristocrat Brandy at his shop at a place called Muniyara. To prove the allegation, the prosecution examined PWs.1 and 4 and Exts.P1 to P5 and MO.I and MO2 series were marked. When the appellant was questioned under section 313 Cr.P.C.. he denied the allegation levelled against him and stated that he had not involved in the commission of the offence as alleged by the prosecution. Relying on the evidence adduced by the prosecution, the trial court found that the appellant guilty of the offence punishable under section 55(a) of the Abkari Act and he was convicted thereunder and sentenced to undergo simple

imprisonment for a period of three months and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for three months. The above conviction and sentence awarded against the appellant are assailed in this appeal.

2. Though various grounds are urged by the the learned counsel for the appellant, the learned counsel pressed only two grounds. Firstly, it is contended that the finding of the trial court that the appellant has committed an offence punishable under section 55(a) of the Abkari Act is not tenable in the light of two decisions reported in Surendran V.State of Kerala (2004 (1) KLT 404 , Sudhepan @ Aniyan V. State of Kerala (2005(2) KLT (Cri) 631) Secondly, it is contended that even if the evidence of prosecution witnesses is accepted, the appellant can be punished under section 63 of the Abkari Act as per decisions reported in Sabu V. State of Kerala (2007(4) KLT 169) and Mohanan V. State of Kerala (2007(1) KLJ 436).

3. This Court heard the learned counsel for the appellant and the learned Public Prosecutor.

4. The prosecution case is that when the Sub Inspector of Police conducted a search in the vegetable shop of the appellant, he was found in unauthorized possession of 23 bottles each containing 375 ml. capacity of Aristocrat Brandy at his shop. The Sub Inspector of Police after preparing

mahzar in the presence of independent witnesses including PW1 taken sample for analysis. As per Et.P4 certificate, the samples contained 42.46 and 42.33 % of ethyle alcohol. The trial court after accepting the evidence found that 8.62 litres of Indian Made Foreign Liquor was seized from the possession of the appellant.

5. In Surendran's case (Supra) this Court held that the case should fall within the ambit of section 55(a) only when a person was found to be in possession of liquor in the course of import, export, transport or transit of the goods. In Sudhepan's case (Supra) this Court held that under section 55 (a) of the Abkari Act the prosecution must allege and prove that possession of the contraband liquor was incidental or in connection with export, import, transport or transit of liquor. The trial court found that the prosecution has proved that the appellant was found in possession of 8.62 litres of Indian Made Foreign Liquor which is more than the legally permissible quantity of Indian Made Foreign Liquor. If that be so, the principle laid down by this Court in the above two decisions is applicable in the facts and circumstances of this case. Apart from the above two decisions, the learned counsel for the appellant relies on a Division Bench decision of this Court reported in Mohanan V. State of Kerala (2007(1) KLJ 436). In the above decision this Court held that section 55(a) is applicable

only when person illegally imports, exports liquor or in possession of liquor while illegally importing it. The prosecution in this case has not proved that the possession of the contraband article was incidental or in connection with export, import, transport or transit of liquor. If that be so, the finding of the trial court that the appellant has committed an offence punishable under section 55(a) of the Abkari Act is not sustainable. Hence, the conviction and sentence ordered against the appellant under section 55(a) of the Abkari Act are hereby set aside and he is acquitted of the above charge.

6. The evidence of PW3 would show that the contraband article was purchased from the Kerala State Beverages Corporation and kept in the shop of the appellant. Under section 11A of the Foreign Liquor Rules, no quantity of foreign liquor in excess of the quantity as notified by the Government under sections 10 and 13 of the Abkari Act. Violation of Rule 11-A of the Foreign Liquor Rules can be punished only under section 63 of the Abkari Act. This question was considered by this Court in a decision of this Court reported in Sabu's case (Supra) and held that violation of rules 11 and 11A can be punished only under section 63 of the Abkari Act. Hence, by applying the principles laid down by this Court in the above decisions and on accepting the evidence of the prosecution, this Court is of

the view that appellant can be punished under section 63 of the Abkari Act for violation of the Foreign Liquor Rules.

7. The incident happened on 18-9-2000 and the appellant was found in possession of 8.62 litres of Indian made foreign liquor. It is seen that the appellant was undergoing imprisonment for more than ten days. Taking into consideration all these aspects, this Court is of the view that a fine of Rs.5,000/- and in default to under go simple imprisonment for three months under section 63 of the Abkari Act will meet the ends of justice.

8. In the circumstances, the appellant is found guilty under section 63 of the Abkari Act and he is convicted thereunder and sentenced to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for three months. It is reported that the appellant has already deposited an amount of Rs.10,000/-. If that be so, the amount in excess of Rs.5,000/- has to be refunded to the appellant.

With the above modification, the appeal stands dismissed.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Crl. A. No. 2013/2003

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Judgment

7-11-2007